

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

July 19, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

Dear Voting Section Chief:

New Hampshire Revised Statute Annotated ("RSA") 653:10, a STATUTE related to the assumption of office, most recently amended by Laws of 1983 Chapter 426 and previously amended by the chapters cited below.

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 653:10, a STATUTE related to the assumption of office, most recently amended by Laws of 1983 Chapter 426 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 426 (1983) amending RSA 653:10 is attached. (Exhibit 653:10 A).
- b) Chapter 436 (1979) recodifying RSA 64:01 as RSA 653:10 is attached (Exhibit 653:10 B).
- c) The changes made by amendments to RSA 653:10 are as follows:

1. Chapter 426 (1983) replaces the words “...*January 1*...” with the phrase “... *the first Wednesday after the first Tuesday in January* ...” in the third sentence of this section.
 2. Chapter 436 (1979) recodifies RSA 64:01 as RSA 653:10.
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
 - e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
 - f) Not applicable.
 - g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
 - h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 426 (Exhibit 653:10 A). The bill was signed into law (by the Governor) on June 24, 1983, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
 1. Chapter 426 (1983) adopted June 24, 1983
 2. Chapter 436 (1979) adopted June 25, 1979
- j) Effective dates:
 1. Chapter 426 (1983) effective August 23, 1983
 2. Chapter 436 (1979) effective July 1, 1979
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.

m) The purpose for the changes are as follows:

1. The purpose of the Chapter 426 (1983) change is to clarify when elected county officers are to assume office following a state general election for that office
2. The purpose of the Chapter 436 (1979) was to recodify RSA 64:01 as RSA 653:9

n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups ... to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).

o) None known.

p) RSA 653:10 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 653:10 C. This submission seeks preclearance of all subsequent changes.

q) Not applicable as this is not a redistricting plan.

r) Exhibit 653:10 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
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bud.fitch@doj.nh.gov

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CHAPTER 426

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appointed for a 5 year term by the commissioner. The public member shall be appointed for a 5 year term. Any vacancy on the board shall be filled in a like manner for the unexpired term. Board members shall serve until their successors are appointed and qualified.

III. Advisory board members shall serve without compensation but may be reimbursed for actual expenses incurred in connection with their official duties. Said expenses shall be a charge on the apple marketing account.

IV. The duties and responsibilities of the advisory board shall be as follows:

(a) To recommend to the commissioner any rules relating to the marketing order.

(b) To recommend to the commissioner any amendments to the marketing order which are deemed to be advisable by the board.

(c) To prepare and submit to the commissioner an estimated budget that may be required for the proper operation of the marketing order.

(d) To recommend to the commissioner methods of assessing members of the apple industry and methods for collecting the assessed funds.

(e) To assist the commissioner in the collection and processing of information and data necessary for the proper administration of a marketing order.

(f) To advise the commissioner on the fines to be imposed as penalties for any violation of a marketing agreement or marketing order.

(g) To perform such other duties in connection with the marketing order as the commissioner shall designate.

341-A:21 Hearings. The commissioner may call for hearings as required by this subdivision by giving interested parties 10 days' notice which states the time, place and purpose of the scheduled hearing.

341-A:22 Rules. The commissioner shall adopt under RSA 541-A such rules as are necessary to carry out the purposes of this subdivision.

425:3 Application of Receipts. Amend RSA 6:12, I by inserting after subparagraph (s) the following new subparagraph:

(t) Money received under RSA 341-A:18, which shall be credited to the apple marketing account.

425:4 Consolidation of Provisions. The director of legislative services is authorized to consolidate and integrate the changes in RSA 6:12 made in this act with the changes in RSA 6:12 made by all other acts of the 1983 session of the general court which become law. Such authority shall be subject to the approval of the president of the senate and the speaker of the house, shall not include the power to make any substantive change and shall expire upon printing of the 1983 session laws.

425:5 Effective Date. This act shall take effect 60 days after its passage.

[Approved June 24, 1983.]

[Effective Date August 23, 1983.]

CHAPTER 426 (HB 273)

AN ACT REQUIRING PRESIDENTIAL PRIMARY CHECKLISTS TO BE DEPOSITED AT THE STATE ARCHIVES AND WITH THE CLERK OF THE FEDERAL DISTRICT COURT AND MAKING CERTAIN OTHER CHANGES IN THE ELECTION LAWS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

426:1 Change in Date for Assumption of Office. Amend RSA 653:10 (supp) as inserted by 1979, 436:1 by striking out in line 4 the word and number "January 1" and inserting in place thereof the following (the first Wednesday after the first Tuesday in January) so that said section as amended shall read as follows:

653:10 Assumption of Office. Federal officers-elect shall assume office on the date set by the U.S. Constitution. State officers-elect shall assume office on the date set by the New Hampshire Constitution. County officers-elect shall assume office on the first Wednesday after the first Tuesday in January of the year following the state general election at which they were elected.

426:2 Change in Date for Corrections and Additions to Checklist. Amend RSA 654:28 (supp) as inserted by 1979, 436:1 by striking out in line 11 the word "Wednesday" and inserting in place thereof the following (Friday) so that said section as amended shall read as follows:

654:28 Procedure. The supervisors of the checklist shall hear all applications for a correction of the checklist and the evidence submitted thereon and shall correct it according to their best knowledge so that it contains only the names of those persons qualified to vote at said election. The names of all persons not qualified to vote at the time of any session, but who shall clearly be qualified to vote on election day, may be added to the checklist at that session. No additions or corrections shall be made after 6:00 p.m. Saturday 10 days prior to election day, except as provided in RSA 659:12. The additions and corrections resulting from such sessions shall be made to the previously posted checklist on or before midnight on the succeeding Friday either by additions or corrections to said checklist or by posting a new corrected checklist. Notice of such additions or corrections to the checklist shall also be given to the town or city clerk.

426:3 Clarification of Office. Amend RSA 656:7 (supp) as inserted by 1979, 436:1 by inserting in line 4 after the word "congress," the following (executive) so that said section as amended shall read as follows:

656:7 Order of Offices. The order in which the officers to be voted for shall be placed in the party columns aforesaid shall be as follows: Electors of president and vice-president of the United States, governor, United States senator, representatives in congress, executive councilor, state senator, representative to the general court and county officers.

426:4 Change in Number of Ballots. Amend RSA 656:19 (supp) as inserted by 1979, 436:1 by striking out said section and inserting in place thereof the following:

656:19 Number. At each state general election, the secretary of state shall furnish each town or city a number of ballots at least equal to the number of registered voters in that town or city at the last state general election.

426:5 Change in Number of Ballots. Amend RSA 656:26 (supp) as inserted by 1979, 436:1 by striking out said section and inserting in place thereof the following:

656:26 Number. The secretary of state shall furnish to each town or ward clerk the state primary election ballots of each political party in a number at least equal to the number of voters of each respective party on the checklist as used at the last preceding state primary election.

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CHAPTER 427

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426:24 Conditional Provision. If HB 426 of the 1983 regular session, "An Act amending certain checklist practices," becomes law, section 23 of this act shall take effect and section 2 of this act shall be null and void and of no effect. If HB 426 does not become law, section 23 of this act shall be null and void and of no effect.

426:25 Effective Date. This act shall take effect 60 days after its passage.

[Approved June 24, 1983.]

[Effective Date August 23, 1983.]

CHAPTER 427 (HB 310)

AN ACT RELATIVE TO CONSTRUCTION OF THE CENTRAL NEW HAMPSHIRE
TURNPIKE AND MAKING AN APPROPRIATION THEREFOR.

Be it Enacted by the Senate and House of Representatives in General Court convened:

427:1 Authority. Amend RSA 237:2 by inserting after paragraph III the following new paragraph:

IV. Make improvements to the central New Hampshire turnpike, including, but not limited to:

(a) Design and construction of a full interchange at exit 2 in Nashua, terminating on the east side of the turnpike with a 2 lane at grade crossing of the Daniel Webster highway;

(b) Construction of a new exit 7W in Nashua;

(c) Reconstruction of exit 8 in Merrimack to remove the current toll plaza providing toll collection equipment on the on and off ramps;

(d) Construction of the main line toll plaza in Bedford; and

(e) Continue design and engineering of the modernization of the central turnpike.

427:2 Appropriation. Amend RSA 237:7 as inserted by 1981, 87:1 by striking out said section and inserting in place thereof the following:

237:7 Funds Provided.

I. The following sums are appropriated for the purpose of carrying out the projects authorized by RSA 237:2:

	Projects	Amount
(a)	Improvements to the Blue Star memorial highway. RSA 237:2, I	\$41,000,000
(b)	Improvements and 2 lane extension of Spaulding turnpike. RSA 237:2, II	\$30,000,000
(c)	Improvements to central New Hampshire turnpike. RSA 237:2, III	\$28,500,000

chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1980 state general election, the 4-year term shall be rotated in sequence starting with district 3.

Federal Officers to Be Elected

653:2 Electors of the President and Vice-President. At the state general election in 1980 and at the state general election every fourth year thereafter, the voters of the state shall elect the number of electors of the president and vice-president of the United States to which the state is entitled.

653:3 United States Senators. At the state general election in 1980 and at the state general election every sixth year thereafter and at the state general election in 1984 and at the state general election every sixth year thereafter, the voters of the state shall elect one United States senator.

653:4 United States Representatives. At every state general election, the voters of each congressional district shall elect one United States representative.

Election of Delegates to Party Conventions

653:5 Delegates to National Party Conventions. At every presidential primary election, the voters of the state shall vote their preference for party candidates for president and thereby choose the delegates to each presidential nominating convention to which the state is entitled.

653:6 Delegates to State Party Conventions. At every state primary election, the voters in each state representative district shall elect delegates to each state party convention in accordance with the districts laid out in RSA 662:6.

Election Dates

653:7 State General Election. The state general election shall be held on the first Tuesday following the first Monday in November of every even-numbered year.

653:8 State Primary Election. The state primary election shall be held on the second Tuesday in September of every even-numbered year.

653:9 Presidential Primary Election. The presidential primary election shall be held on the second Tuesday in March or on the Tuesday immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected. Said primary shall be held in connection with the regular March town meeting or election or, if held on any other day, at a special election called by the secretary of state for that purpose.

653:10 Assumption of Office. Federal officers-elect shall assume office on the date set by the U.S. Constitution. State officers-elect shall assume office on the date set by the New Hampshire Constitution. County officers-elect shall assume office on January 1 of the year following the state general election at which they were elected.

CHAPTER 654

VOTERS AND CHECKLISTS

Eligibility

654:1 Legal Voter. Every inhabitant of the state having a fixed and permanent established domicile, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he is domiciled. The determinant of one's domicile is a question of factual physical presence incorporating an intention to reside for an indefinite period. This domicile is the voter's residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he dwells on a continuing basis for a significant portion of each year.

654:2 Temporary Absence. A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his home. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes. No person shall be deemed to have lost a domicile by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.

654:3 Voting Rights of Overseas Citizens. Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled outside the United States shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he had his domicile immediately prior to his departure from the United States, even though he no longer maintains domicile in said town or city and even though his intent to return thereto is uncertain, provided:

- I. He complies with all other applicable requirements and qualifications of the state of New Hampshire; and
- II. He is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and
- III. He has a valid passport or card of identity issued under the authority of the secretary of state of the United States.

654:4 Armed Services Voters.

I. Notwithstanding any other provision of law to the contrary, an armed services voter, as hereinafter defined, being a citizen of the United States and being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire shall have the right to vote absentee in any state election in the town or city in New Hampshire in which he has his domicile immediately prior to such service, even though he no longer maintains domicile in said town or city and even though his intent to return is uncertain, provided:

- (a) He complies with all other applicable requirements and qualifications of the state of New Hampshire.
- (b) He is not registered to vote in any other state or election district of a state or in any territory or possession of the United States.
- II. As used in this section, the term "armed services voter" means:
 - (a) Members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or National Guard, or any other branch of the United States Armed Forces.

653:10

EXHIBIT



U.S. Department of Justice

Civil Rights Division

EXHIBIT

653:10 C

PENGAD 800-631-6889

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

*Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

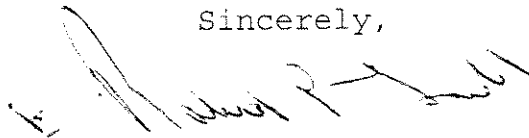
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

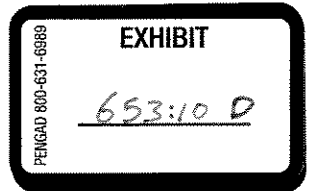
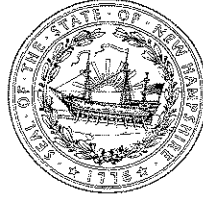
A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov